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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

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SBC'S REQUEST FOR LEAVE TO FILE A CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION AND TO EXCEED PAGE LIMITS

Pursuant to section 1.3 of the Commission's rules, SBC respectfully requests permission to exceed the 25-page limit in the attached Consolidated Opposition to Petitions for Reconsideration and Clarification. *See* 47 C.F.R. § 1.106(g). Sixteen petitions have been filed with the Commission seeking reconsideration and/or clarification on a multitude of issues. MCI alone filed two petitions with the Commission, each 25-pages in length, apparently in an effort to avoid page limitations. The many issues raised in these petitions could not adequately be addressed in 25 pages. At the same time, because of the interrelated nature of these issues and for the convenience of the Commission, SBC has consolidated its response to these petitions in a single filing of 50 pages. Under the circumstances, good cause exists for waiving the 25-page limit, and SBC respectfully asks the Commission to accept this consolidated opposition in excess of 25-pages, in lieu of separate submissions.

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List

Respectfully submitted,

Michael K. Kellogg
Austin C. Schlick
Rachel E. Barkow
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

Roger K. Toppins
Gary L. Phillips
Christopher M. Heimann
SBC COMMUNICATIONS INC.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005
(202) 326-8900

Counsel for SBC Communications Inc.

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Roger K. Toppins
Gary L. Phillips
Christopher M. Heimann
SBC COMMUNICATIONS INC.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005
(202) 326-8900

Michael K. Kellogg
Austin C. Schlick
Rachel E. Barkow
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

Counsel for SBC Communications Inc.

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SBC'S CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION

SUMMARY AND INTRODUCTION

Although the petitions for reconsideration and clarification contain a grab-bag of requests, many having little to do with this proceeding, the underlying arguments can be grouped loosely into eight basic categories: (1) attempts to narrow the Commission's already minimal exception to the requirement of unbundling local switching;[1] (2) challenges to the Commission's decision not to order unbundling of packet switching and other advanced services equipment; (3) entreaties to shift the entire cost of loop conditioning on behalf of CLECs to the ILECs; (4) efforts to re-institute operator services and directory assistance as UNEs; (5) claims that the Commission should require incumbents to provide unbundled access to AIN triggers; (6) attempts to bypass the Eighth Circuit's proceeding on UNE combinations; (7) requests to address issues related to the Commission's *Supplemental Order*[2] on special access; and (8) pleas to expand the loop and dark fiber unbundling requirements. Because the petitioners seeking

[1] Bell Atlantic asks the Commission to eliminate the EEL requirement for the switching exception to apply. Petition for Reconsideration of Bell Atlantic at 2-3 (FCC filed Feb. 17, 2000). SBC agrees with Bell Atlantic but does not here address the issue.

[2] Supplemental Order, *Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-370 (rel. Nov. 24, 1999) ("*Supplemental Order*").

reconsideration on these grounds[3] have offered no new or persuasive evidence or support for the Commission to reconsider any of these issues, the petitions should be denied.

I. THE COMMISSION SHOULD NOT EXPAND THE ILECS' OBLIGATION TO PROVIDE ACCESS TO UNBUNDLED LOCAL SWITCHING

In the *UNE Remand Order*,[4] the Commission required ILECs to provide unbundled access to circuit switches, subject to one exception. In density zone 1 areas in the top 50 metropolitan statistical areas ("MSAs"), the Commission found that CLECs are not impaired without access to unbundled local switching when they serve customers with four or more lines if ILECs provide nondiscriminatory, cost-based access to the enhanced extended link ("EEL") throughout those density zone 1 areas.

This exception to the unbundled switching obligation is exceedingly narrow. Only 64 out of more than 3000 of SBC's wire centers are zone 1 wire centers within the top 50 MSAs. Those wire centers account for approximately 2 million business lines – only 16% of SBC's business lines in the top 50 MSAs and about 3% of SBC's lines overall. Moreover, many of these lines are used by customers with three or fewer lines.[5] Thus the exception to the ILECs' unbundled local switching obligation covers only about one percent or, at most, two percent of SBC's lines.

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[3] In this consolidated opposition, SBC takes issue with those petitions for reconsideration and clarification with which it disagrees. SBC supports BellSouth's and Bell Atlantic's petitions for reconsideration of the Commission's definition of inside wire and its decision to require ILECs to construct a single point of interconnection in multi-unit premises for the reasons stated in those petitions. SBC also supports Bell Atlantic's request that the Commission reconsider its decision to permit CLECs to connect their loop facilities directly to the ILEC's NID.

[4] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*" and "*Fourth FNPRM*," respectively).

[5] *See UNE Remand Order* n.580 (noting that 72% of Ameritech's business customers use three lines or less). *See also* AT&T Corp.'s Petition for Reconsideration and Clarification of the Third Report and Order at 17 (FCC filed Feb. 17, 2000) ("AT&T Petition") (conceding that most business lines on a voice-grade equivalency basis are used by customers with 7 lines or fewer).

Incredibly, having obtained the right to purchase unbundled local switching for 98% of SBC's customer lines, AT&T, MCI, Sprint, and CompTel want still more. They ask the Commission to raise the four-line threshold so that virtually *no* customers are subject to the switching exception. AT&T asks the Commission to raise the threshold to eight lines, which it claims represents the point at which it is economic for customers to substitute DS-1 loops for DS-0 loops.[6] Similarly, MCI and CompTel ask the Commission to raise the threshold to DS-1 and above loops, while Sprint proposes that the threshold be increased to 39 lines.[7] AT&T also asks the Commission to "clarify" its local switching rules in ways that significantly narrow the carve-out effected by the four-line rule. The Commission should reject these requests.

A. The Commission Should Not Increase the Four-Line Threshold

Petitioners collectively offer three arguments to support their request that the Commission increase the four-line threshold. They claim that this threshold: (1) does not reflect a level at which carriers can serve customers with facilities other than individual voice-grade loops; (2) does not capture all small businesses; and (3) raises administrative difficulties.

None of these arguments warrants an increase in the four-line threshold. The record in this proceeding contains unrefuted evidence that CLECs have been deploying switches at a furious pace in both large and small markets.[8] By March 1999, they had deployed 724 local

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[6] In fact, the cutover point is between five to eight lines. A typical DS-1 costs approximately $450 per month. Typical interstate switched access rates approximate $.01 per minute. Therefore, the break-even point is 45,000 minutes per month. In estimating trunk usage, the FCC assumes 9000 minutes per trunk per month. Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, *Access Charge Reform*, 11 FCC Rcd 21354, 21401,¶ 94 (1996).

[7] These requests for a cut-off at DS-1 levels or higher represent nothing more than a sleeve off petitioners' vests. Virtually no customers purchase switched DS-1 loops from SBC. Customers with sufficient traffic to warrant a DS-1 loop purchase special access services (or the EEL), which bypass the ILEC switch. Thus the carve-out that these petitioners propose is not a carve-out at all: it represents a situation in which they have no conceivable interest in purchasing access to an ILEC switch under any circumstance.

[8] *See* Peter W. Huber & Evan T. Leo, UNE Fact Report prepared on behalf of Ameritech, Bell Atlantic, BellSouth, GTE, SBC, U S WEST) at I-1 to I-35 (FCC filed May 26, 1999) (attached to Comments of the United States Telephone Association) ("*UNE Fact Report*"). *See also* Comments of SBC Communications Inc. at 34-42 (FCC

exchange switches in 320 different cities. Today, they have deployed more than 1100 local exchange switches, and CLEC switch deployment continues at a rate in excess of one switch per day.[9] This switch deployment belies CLEC claims that CLECs are impaired without access to ILEC circuit switches in all but the very narrowest of circumstances. Clearly, CLECs would not be deploying so many switches if these facilities were of such limited utility. As a matter of plain common sense, then, the petitioners' arguments should be rejected.

The facts regarding SBC's cutover performance further bear this out. While petitioners claim that CLECs cannot use their own switches to serve customers with DS-0 loops, SBC has received tens of thousands of cutover orders on behalf of such customers. Indeed, most of these orders are for customers with relatively few lines. For example, during December 1999 and January 2000 (the most recent two months for which data is available), about 75% of the lines cutover by SWBT were for customer locations with 7 or fewer lines. Significantly, SWBT performed both the coordinated and noncoordinated orders on a timely and accurate basis – with the percentage of lines disconnected on time exceeding 99% for noncoordinated orders and approximating 98% for coordinated orders.[10] Under the circumstances, AT&T's claim that CLECs are impaired any time a hot cut is required is baseless.

In short, CLEC requests that the Commission increase the four-line threshold are wholly lacking in credibility and should be denied.

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filed May 26, 1999) ("SBC UNE Remand Comments"); Reply Comments of SBC Communications Inc. at 10-16 (FCC filed June 10, 1999); Ameritech Comments at 69-86 (FCC filed May 26, 1999); Ameritech Reply Comments at 8-34 (FCC filed June 10, 1999) ("Ameritech UNE Remand Reply Comments").

[9] Traffic Routing Administration (TRA), Telcordia Technologies, Inc., *Local Exchange Routing Guide*, Dec. 1, 1999. As of March 1, 1999, CLECs had 724 switches. *UNE Fact Report* at I-1 (citing Bellcore, TR-EQP-000315, *Local Exchange Routing Guide*, Mar. 1, 1999).

[10] In Texas, SBC receives six times as many cutover orders for customer locations with ten or fewer lines than for those with more than ten lines. *See Ex Parte* Letter from Austin C. Schlick, Counsel for SBC, to Magalie Roman Salas, Esq., Secretary, FCC, March 2, 2000, in *Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-4.

1. CLECs Are Not Impaired in Their Ability To Serve Customers with Individual Voice-Grade Loops

AT&T and CompTel argue principally that the four-line rule is at odds with the impairment test because it does not coincide with the level at which customers can substitute DS-1 loops for DS-0 loops.[11] AT&T argues that a CLEC can "avoid the cumbersome individual loop hot cut provisioning processes that the Commission has found impair the ability of CLECs to compete without the ULS element" only if it is practical for the customer to use a DS-1 loop facility.[12] It argues, further, that there is no rational basis for distinguishing customers who use four to seven lines from customers who use three lines or less. CompTel argues that it is not cost-effective for a CLEC to serve a customer with its own switch unless it can aggregate the customers' DS-0 loops onto DS-1 or higher facilities.[13]

These arguments are meritless. First, AT&T's argument is based on a mischaracterization of the basis for the four-line threshold. In establishing the four-line threshold, the Commission did not conclude, as AT&T represents, that a CLEC is impaired in its ability to serve a customer any time a manual cutover is required. Rather, the Commission concluded that the cutover process impairs the ability of CLECs to serve the mass market "due to the large number of individual loop cutovers that are necessary to serve this market."[14] In other words, the Commission did not find that all cutovers create an impairment, or even that all non-coordinated cutovers create an impairment, but that ILECs had not demonstrated that they could

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[11] AT&T Petition at 13-16; Petition for Reconsideration of Competitive Telecommunications Association at 3-5 (FCC filed Feb. 17, 2000) ("CompTel Petition").

[12] AT&T Petition at 16. *See also id.* at 14.

[13] CompTel Petition at 4-5.

[14] *UNE Remand Order* ¶ 266. SBC believes that this conclusion was unfounded and is inconsistent with the record evidence. That, however, is irrelevant for present purposes.

perform successfully and in a timely fashion the large volumes of cutovers that would be required if CLECs used their own switches to serve the mass market.[15]

Significantly, this is exactly what AT&T argued in its comments. AT&T did not then claim that CLECs were impaired any time a hot cut was required – nor could it have, given the large number of successful hot cuts that already had been performed.[16] To the contrary, AT&T argued that ILECs could not perform the huge volumes of hot cuts that might attend mass market competition if unbundled switching were not available:

> The coordinated hot cuts that must be used to convert customers to a CLEC's switch are too labor-intensive and error-prone to accommodate the millions of residential and business customers nationwide that can be expected to switch to CLECs in a robustly competitive market. This manual activity cannot be performed in the large volumes that broad-based, mass market entry requires.[17]

Although AT&T now claims that the four-line rule is irrational, that rule, in fact, directly addresses this alleged concern. As the Commission pointed out, virtually all residential customers and the majority of business customers use three lines or less, and thus could be served using the UNE platform ("UNE-P") under the Commission's rules.[18] In this respect, the four-line threshold sharply reduces the number of loop cutovers that a CLEC would require in

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[15] *See id.* ¶ 271 ("because broad-based residential competition is at best nascent, incumbent LECs generally have not successfully provisioned coordinated loop cutovers in the volumes necessary for requesting carriers to serve the mass market").

[16] *See, e.g.*, Ameritech UNE Remand Reply Comments at 31-32. Subsequent to the filing of AT&T's Comments, the Commission determined that Bell Atlantic was successfully providing nondiscriminatory access to hot cuts in New York, disproving AT&T's new theory that hot cuts are inherently inadequate. *See* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404, ¶¶ 291-309 (FCC rel. Dec. 22, 1999).

[17] Comments of AT&T Corp. on Second Further Notice of Proposed Rulemaking at 100 (FCC filed May 26, 1999) ("AT&T UNE Remand Comments").

[18] *UNE Remand Order* ¶ 293 & n.580.

order to provide ubiquitous service.[19] Indeed, when combined with the geographic limitations the Commission adopted, the four-line threshold all but eliminates the need for cutovers – removing from SBC's unbundled local switching obligation only about two percent of its lines. In addition, as the Commission noted, this threshold enables CLECs more effectively to manage the cutovers that would be required, since they are likely to engage in direct marketing, rather than mass market advertising, in serving medium and large business customers.[20]

To be sure, there was no magic to the four-line rule *per se.* The Commission itself so acknowledged. But the *ex parte* submitted by Ameritech and cited in the *UNE Remand Order* shows that nearly three quarters of Ameritech's business customers use three lines or less and that there is a marked drop-off in the percentage of business customers with three lines (12%) and four lines (6%).[21] Under the circumstances, and given the Commission's assumptions regarding hot cuts – with which SBC disagrees – AT&T hardly has grounds for complaining that the four-line threshold is too low.[22]

2. Sprint's Claim That Some Small Businesses Use More Than Three Lines is Irrelevant

Sprint argues that the Commission's four-line rule does not capture all small businesses. It states that "an often-used and conservative definition of 'small business' is one that employs

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[19] *See, e.g., id.* ¶ 297 ("[T]o the extent that incumbent LECs provide requesting carriers with unbundled switching to serve the mass market, requesting carriers will require fewer coordinated loop cutovers in the aggregate and can focus their efforts on coordinated cutovers for customers not served with unbundled local circuit switching.").

[20] *Id.* ¶¶ 297-98.

[21] *Ex Parte* Letter from James K. Smith, Director-Federal Relations, Ameritech, to Magalie Salas, Secretary, FCC, Sept. 8, 1999.

[22] It is not entirely clear from AT&T's petition whether its claim is that all loop cutovers create an impairment or only uncoordinated cutovers. *Compare* AT&T Petition at 14 ("CLECs subjected to a hot cut process encounter severe impairments in converting customers unless the loop conversion can occur on a project-managed basis") *with id.* at 16 (the Commission has found that the hot cut process impairs the ability of CLECs to compete without the ULS element). To the extent it is the latter, AT&T's suggestion that only those loop cutovers involving a conversion of DS-0 to DS-1 facilities can be handled on a project-managed (*i.e.*, coordinated) basis is incorrect. In

fewer than 100 persons" and that a business of 100 persons might typically use 22 lines.[23] The sole authority for this claim is a table from a 1998 Yankee Group report, which refers to users with up to 99 lines as small businesses. That table, taken by itself, is hardly grounds for a Commission definition of small business. More importantly, the Commission adopted a four-line threshold, not out of any attempt to define "small business," but to identify a cut-off at which CLECs would not be impaired in their ability to self-provision circuit switching. Sprint does not present any evidence to suggest that CLECs are impaired in their ability to serve customers with more than three lines without access to ILEC switches. Its request for a 39-line threshold should be rejected.

3. Administrative Issues Are Overstated and Readily Addressed

MCI argues that the four-line rule presents administrative difficulties that complicate its ability to serve small business customers. It claims, for example, that it can be difficult to predict the exact number of lines that individual small businesses might need or how the needs of those customers will change. It claims, further, that the needs of many small businesses are seasonal and might fluctuate from three or fewer lines to four or more by season.

MCI makes no effort to show that the alleged problem it describes affects a significant number of customers. Indeed, considering the tiny number of customers served by zone 1 offices in the top 50 MSAs, MCI's concerns are undoubtedly exaggerated. In any event, MCI's argument proves too much: to the extent a particular business might decide to add a fourth line, so too might another business decide to add a fifth, sixth, seventh, or eighth line – which would

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the SBC region, CLECs can request that *any* loop conversion be handled on a coordinated basis, and the majority of cutovers are, in fact, coordinated.

[23] Petition for Reconsideration and Clarification of Sprint Corporation at 8 (FCC filed Feb. 17, 2000) ("Sprint Petition").

warrant substitution of a DS-1 loop for the existing DS-0 loops. *Any* cut-off the Commission establishes will necessarily raise these types of line-drawing issues.

In any event, the Commission could establish transitional rules to minimize any problems that could arise in these marginal situations. For example, the Commission could rule that a CLEC that is using unbundled local switching to serve a particular customer may continue doing so for up to nine months after that customer no longer qualifies. That would give the CLEC more than enough time to make alternative arrangements to serve that customer. As far as seasonal customers are concerned, SBC submits that a CLEC may not use unbundled local switching to serve a customer whose seasonal requirements include more than three lines unless that CLEC seeks only to serve that customer during the period in which it uses three or fewer lines.

B. The Commission Should Reject AT&T's Proposed Clarifications

In addition to seeking an increase in the four-line threshold, AT&T asks the Commission to "clarify" its unbundled local switching rules in ways that would significantly narrow the number of lines subject to the four-line carve-out. Specifically AT&T asks the Commission to rule that, for purposes of applying the four-line (or any other) threshold: (1) if multiple customers reside at the same address, each customer should be treated as a separate end user; (2) if a single customer has multiple locations, each location should be treated as a separate end user; (3) ILECs must provide unbundled local switching to each CLEC for up to three voice-grade lines for each customer, even in cases where the exception applies; and (4) once a CLEC has obtained unbundled local switching for a particular customer, the CLEC may continue

indefinitely providing unbundled switching to that customer, even after the customer no longer qualifies under the four-line threshold.[24]

None of these clarifications can be squared with the rationale underlying the four-line rule. Indeed, AT&T itself offers virtually no support for these requests. AT&T's first request – which is completely unexplained – appears to be aimed at multi-tenant housing units. To the extent, however, that the local carrier serving those units is chosen by the manager or owner of the building, the number of tenants in that building is irrelevant. Such a building would be indistinguishable, for all practical purposes, from a large business that has ordered the same number of phone lines for its employees. In contrast, to the extent that each tenant in a multi-unit building is served by its own loop, those tenants should be counted separately irrespective of the fact that they share an address.

AT&T's related request that each location of a business with multiple locations in an area should be treated as a separate "end user" is also meritless. According to AT&T, this clarification is warranted because a CLEC seeking to serve those multiple locations "cannot take advantage of economic or operational efficiencies across those locations."[25] That rationale, however, has nothing to do with the four-line rule. The four-line rule was intended to obviate the need for cutovers when CLECs seek to serve the mass market. A large business is not part of the mass market, irrespective of the number of locations it has in a particular area, and ILECs are not incapable of performing cutovers on behalf of such businesses. Moreover, like any large business, it will generate significantly more revenue than mass market customers, and LECs are

[24] AT&T Petition at 17-18.

[25] *Id.* at 17.

likely to market to that customer through direct sales channels rather than mass market advertising. All of these factors distinguish multi-office businesses from low-volume customers.

AT&T's third request – that CLECs be able to purchase unbundled local switching for up to three voice-grade lines for every customer, even large business customers – also should be rejected. Here again, AT&T does not even attempt to explain why CLECs should be able to purchase unbundled local switching to serve large business customers or how this is consistent with the reasoning of the *UNE Remand Order*. Rather, the sole rationale AT&T offers is the assertion that xDSL lines should be excluded from any line count because they are not connected to ILEC circuit switches. This so-called rationale, however, is irrelevant. The owner of the switch to which a customer's lines connect has nothing to do with whether or not that customer is a mass market customer. Indeed, under AT&T's theory, a customer with 100 loops connected directly to a CLEC switch and three loops connected to an ILEC switch would be deemed a mass market customer eligible for service under the UNE platform. Such a result would make a mockery of the four-line rule.

AT&T's fourth and final request is that the Commission rule that, once a CLEC obtains unbundled switching to serve a particular customer, it should be able to continue purchasing switching indefinitely – even after the customer no longer qualifies for such service. This request, as well, should be rejected. As discussed above, any legitimate concerns about disruption of service can be addressed through reasonable transitional mechanisms, which SBC would not oppose. There is no need to create a huge loophole in the four-line rule to address these issues.

C. The Commission Correctly Concluded That the Routing Table Is Proprietary

CompTel asks the Commission to reconsider its determination that switch routing tables may be proprietary.[26] CompTel contends that, because "competing carriers and even large end users can design their own routing tables, . . . the routing table *functionality* is not 'proprietary in nature.'"[27] CompTel argues that, "to be proprietary 'in nature,' the proprietary aspects of the UNE must be its 'essential character' or its 'innate disposition.'"[28]

This request would eviscerate the extra protection Congress established for the proprietary features of network elements. As the Commission noted in the *UNE Remand Order*:

> The majority of parties addressing this issue support using intellectual property law as a basis for defining "proprietary in nature." We agree, and find that the intellectual property laws governing patent, copyright and trade secrets find a common purpose in Congress' intention to protect proprietary interests under section 251(d)(2). . . . We find that if an incumbent LEC can demonstrate that it has invested resources (time, material, or personnel) to develop proprietary information or network elements that are protected by patent, copyright, or trade secret law, the product of such an investment is "proprietary in nature[.]"[29]

Nothing in the intellectual property laws suggests that intellectual property protection is available only to that which is "inherently" proprietary. To the contrary, intellectual property, by definition, is the product of research, development, and brain-power.

CompTel suggests, though, that routing tables are not "inherently" proprietary "[b]ecause competing carriers and even large end users can design their own routing tables[.]"[30] The fact that CLECs and even large end users can and do design their own

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[26] CompTel Petition at 17-18.

[27] *Id.* at 18 (emphasis in original).

[28] *Id.* at 17.

[29] *UNE Remand Order* ¶¶ 34-35 (internal citation omitted).

[30] CompTel Petition at 18.

routing tables shows that access to ILEC routing tables is not necessary. It has nothing to do with whether or not routing tables are proprietary. Indeed, the suggestion is akin to arguing that no book, play, or essay is entitled to protection under the intellectual property laws because anyone can write his or her own book, play, or essay.

As Ameritech demonstrated in its comments in the *UNE Remand* proceeding, ILECs invest enormous time, personnel, and resources to establish and maintain their switch routing tables, which, as the "brains" of their switches, are critical to the efficient routing of network traffic and thus of great economic value.[31] Ameritech further showed that it takes extraordinary steps to protect its routing tables from unauthorized disclosure.[32] Switch routing tables therefore plainly meet the requirements for trade secret protection.[33] None of the parties to the *UNE Remand Proceeding*, including CompTel, disputed that fact,[34] and CompTel does not do so here. As a consequence, the routing table plainly meets the Commission's definition of "proprietary in nature."

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[31] *UNE Remand Order* ¶¶ 246-47 (citing Letter from John T. Lenahan, Assistant General Counsel, Ameritech, to Magalie Salas, Secretary, FCC, CC Docket No. 96-98, at 2 (FCC filed July 30, 1999) ("Ameritech July 30, 1999 *Ex Parte*").

[32] *Id.* ¶ 246. In particular, Ameritech has employees sign confidentiality statements; it uses confidentiality agreements with licensees; it protects the routing tables from unauthorized access through the use of passwords and other methods; the physical security of the routing tables and switches is protected against unauthorized access by non-Ameritech personnel; and it maintains rigid control over distribution of copies of the routing table to others. Ameritech July 30, 1999 *Ex Parte* at 4.

[33] *UNE Remand Order* ¶ 247.

[34] *Id.*

II. THE COMMISSION PROPERLY DECLINED TO REQUIRE UNBUNDLING OF PACKET SWITCHING AND OTHER ADVANCED SERVICES EQUIPMENT

A. The Commission Correctly Concluded That Packet Switching Should Not Be Unbundled

In the *UNE Remand Order*, the Commission declined to require unbundling of packet switches for two reasons. First, it held that CLECs are not impaired in their ability to provide advanced services to medium and large business customers without access to ILEC packet switches. It noted that "[t]he record demonstrates that competitors are actively deploying facilities used to provide advanced services to serve certain segments of the market – namely, medium and large business."[35] The Commission also observed that "equipment needed to provide advanced services, such as DSLAMs and packet switches, are available on the open market at comparable prices to incumbents and requesting carriers alike."[36] Moreover, the Commission found that "[i]ncumbent LECs and their competitors are both in the early stages of packet switch deployment, and thus face relatively similar utilization rates of their packet switching capacity."[37] The Commission concluded "[i]t therefore does not appear that incumbent LECs possess significant economies of scale in their packet switches compared to the requesting carriers."[38]

Second, the Commission found that while competitors "may be impaired" in their ability to offer advanced services to residential and small business customers without access to ILEC facilities, requiring unbundling of such facilities would be contrary to the goals of the Act.[39]

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[35] *Id.* ¶ 308.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.* ¶ 306.

Noting the "nascent nature" of the advanced services marketplace and its "overriding objective" under section 706 "to ensure that advanced services are deployed on a timely basis to all Americans,"[40] the Commission held that "[our] decision to decline to unbundle packet switching therefore reflects our concern that we not stifle burgeoning competition in the advanced services market. We are mindful that, in such a dynamic and evolving market, regulatory restraint on our part may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation."[41]

Although nothing has changed since the Commission reached these conclusions, several parties once again ask the Commission to order unbundling of packet switching, including DSLAMs.[42]

Sprint, for example, repeats the argument that collocation costs impair carriers' ability to compete, particularly in smaller central offices.[43] Sprint asks the Commission to order unbundling of packet switches in any end office serving fewer than 5000 lines.[44] This argument runs completely contrary to the Commission's public policy analysis. Indeed, it is in these smaller offices – where the business case for deployment of advanced services may be less compelling – that excessive unbundling requirements would most stifle the deployment of advances services. Moreover, if companies like Rhythms, Covad, and NorthPoint do not require unbundled access to ILEC packet switches, surely Sprint, with its far greater resources, does not.

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[40] *Id.* ¶ 317.

[41] *Id.* ¶ 316.

[42] *See, e.g.*, CompTel Petition at 6-10; Petition for Reconsideration and Clarification of Intermedia Communications Inc. at 2 (FCC filed Feb. 17, 2000) ("Intermedia Petition"); Petition of MCI WorldCom, Inc. for Reconsideration at 6-12 (FCC filed Feb. 17, 2000) ("MCI Reconsideration Petition"); Petition of MCI WorldCom, Inc. for Clarification at 2-3 (FCC filed Feb. 17, 2000) ("MCI Clarification Petition"); Sprint Petition at 10-13.

[43] Sprint Petition at 10-13.

[44] *Id.* at 10.

In any event, this argument was given full weight in the prior proceeding. The Commission concluded that, notwithstanding any costs and delays associated with collocation, unbundling of packet switches would conflict with the goals of the 1996 Act, including the promotion of facilities-based competition and innovation.[45] Sprint offers no basis for reaching a different conclusion.

MCI, on the other hand, suggests that the Commission lacked support for its conclusion that unbundling packet switching would curb facilities-based investment and innovation in the advanced services market.[46] This argument defies basic economics and common sense. As Justice Breyer pointed out in his concurrence on this point, forced sharing may deter firms from "undertak[ing] the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement."[47] Likewise, Thomas M. Jorde, J. Gregory Sidak, and David J. Teece pointed out that, "mandatory unbundling aimed at unproven technologies that are necessary to support new services would severely damage the ILEC's incentives to invest."[48] The Information Technology Industry Council similarly noted that "unwarranted unbundling obligations for electronics associated with advanced services would create economic disincentives for the ILECs to deploy advanced services."[49] Indeed, AT&T's own Chairman acknowledges that "[n]o company will invest billions of dollars to become a facilities-based . . . services provider if competitors who

[45] *UNE Remand Order* ¶¶ 316-17.

[46] MCI Reconsideration Petition at 6-12.

[47] *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 753 (1999) (Breyer, J., concurring in part and dissenting in part).

[48] Affidavit of Thomas M. Jorde, J. Gregory Sidak, and David J. Teece in Response to Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-98 & 95-185, ¶¶ 34-35 (FCC filed May 26, 1999) (attached as Exhibit 2 to Comments of the United States Telephone Association).

[49] Comments of Information Technology Industry Council at 2 (FCC filed May 26, 1999).

have not invested a penny of capital nor taken an ounce of risk can come along and *get a free ride* on the investments and risks of others."[50]

MCI nevertheless claims that the evidence shows otherwise. It claims that "[e]ven a cursory review of the deployment plans, service offering announcements, and speeches by ILEC executives over the past year shows that ILECs are widely and rapidly deploying DSLAMs and packet switching to enable them to offer both advanced data services and basic voice services."[51] It notes, for example, SBC's announcement that it would spend $6 billion to provide 80% of its customers with xDSL services. If anything, however, this investment demonstrates how the *lack* of an unbundling obligation promotes the deployment of advanced capabilities by ILECs. The Commission has never required ILECs to unbundle their packet switches, and SBC did not announce Project Pronto until December 30, 1999 – three months after the *UNE Remand Order* was adopted.

Of course, while MCI is quick to point to ILEC investment in advanced technology, it conveniently ignores the CLECs' investment in those facilities. In the *UNE Remand Order*, the Commission found that "[c]ompetitive LECs . . . appear to be leading the incumbent LECs in their deployment of advanced services."[52] In declining to require unbundling, the Commission was concerned, not only with the impact of unbundling on ILEC investment incentives, but also with the effect unbundling could have on CLEC investment. In fact, TELRIC-based access to ILEC packet switches could significantly reduce the incentives of smaller CLECs – like Covad, NorthPoint, Rhythms, and others – to deploy their own facilities. These carriers have jumped

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[50] *Telecom and Cable TV: Shared Prospects for the Communications Future*, Remarks of C. Michael Armstrong, Chairman and CEO, AT&T, delivered to Washington Metropolitan Cable Club, Washington, D.C. (Nov. 2, 1998) (emphasis added), available at <http:// www.att.com/speeches/item/0,1363,948,00.html> (visited Mar. 21, 2000).

[51] MCI Reconsideration Petition at 5.

[52] *UNE Remand Order* ¶ 307.

aggressively into the advanced services marketplace, and it was perfectly reasonable for the Commission to conclude that it should not undermine their sunk investment or their incentives to expand their offerings by allowing behemoths like MCI, AT&T, and Sprint to obtain TELRIC-based access to these same facilities.

Unable to show that the Commission's decision was unreasonable, MCI attempts to show that it was unlawful. It suggests that the Commission must order unbundling if a carrier would be impaired without access to a network element.[53] But section 251(d)(2) plainly states that the "necessary" and "impair" standard is the *minimum* standard before unbundling can be ordered.[54] It therefore necessarily follows that the Commission can set other thresholds before mandating unbundling, and the Commission properly considered whether facilities-based competition and innovation would be hindered if it ordered forced sharing in this market.

MCI also asks the Commission to "clarify" that packet switching must be made available as a UNE when the ILEC is using it to provide voice services.[55] As an initial matter, this is hardly a request for "clarification." To the contrary, MCI's 25-page petition for clarification is nothing more than an attempt to bypass the Commission's page limits for MCI's additional 25-page petition for reconsideration. To the extent the Commission nevertheless considers the clarification petition, rather than dismissing it on this basis, the Commission should reject MCI's premise that a CLEC's need for access to an element is determined by how the ILEC uses that element. Whether a CLEC is impaired without access to unbundled packet switching is wholly unrelated to whether the incumbent uses packet switching for its own voice or data services, or

[53] MCI Reconsideration Petition at 11-12.

[54] SBC takes issue with the Commission's determination that unbundling can be ordered when the "necessary" and "impair" standards are not satisfied, but SBC will challenge that holding in the D.C. Circuit, not in these reconsideration and rehearing proceedings.

[55] MCI Clarification Petition at 2-3.

any other purpose. And unbundling a packet switch that the ILEC uses for voice services would have the same deleterious effects on innovation and investment as would unbundling a packet switch that the ILEC uses for data service.

B. The Commission Properly Defined Packet Switching

1. The DSLAM Should Be Included in the Definition of Packet Switching

In the *UNE Remand Order*, the Commission held that the "equipment needed to provide advanced services, such as DSLAMs and packet switches, are available on the open market at comparable prices to incumbents and requesting carriers alike."[56] Without in any way disputing this finding, MCI argues that the Commission should not have included the DSLAM in its definition of packet switching because a DSLAM serves functions unrelated to packet switching, such as housing splitters.[57] But, as the Commission concluded, the "integral" function of the DSLAM is packetizing.[58] The fact that the DSLAM sometimes includes a splitter does not alter its essential packet switching functions of routing and addressing. Thus, the DSLAM is properly included in the definition of packet switching.

According to AT&T, the Commission should classify DSLAMs as part of the loop because the loop, by definition, includes attached electronics. As Ameritech noted in its reply comments, however, a DSLAM is no more an integral part of the loop or mere "loop electronics" than is a switch.[59]

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[56] *UNE Remand Order* ¶ 308.

[57] MCI Reconsideration Petition at 13; *see also* AT&T Petition at 10.

[58] *UNE Remand Order* ¶¶ 303-04.

[59] Ameritech UNE Remand Reply Comments at 45.

2. The Commission Should Not Define Unbundled Network Elements According to Particular Technologies

CompTel and Intermedia argue that the Commission should order unbundling of various packet switching technologies such as frame relay, voice over data, Internet protocol (IP), and asynchronous transfer mode (ATM) services.[60] The Commission properly rejected these arguments in the *UNE Remand Order*, noting that unbundled network elements should be defined, "to the extent practicable, in a technologically neutral manner so as to not favor one particular packet switching technology over another."[61] As further grounds for rejecting this proposal, the Commission noted that defining elements according to a specific technology would create the risk that new packet switching technologies would be difficult to categorize. Finally, supporters of technology unbundling had failed to provide information that they are impaired without access to the technologies they named.

CompTel and Intermedia offer no new evidence of CLEC impairment without access to particular technologies. That is unsurprising. Long-haul services attract the lion's share (over 85%) of large and medium business customer expenditures.[62] In this long-haul segment of the market, AT&T, MCI, and Sprint – not ILECs – dominate. They control over 96% of the ATM market and over 93% of the frame relay market.[63] A multitude of other CLECs are also offering these services without unbundled access to ILEC facilities. Sixty-eight CLECs provide ATM

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[60] CompTel Petition at 6-8; Intermedia Petition at 3-13.

[61] *UNE Remand Order* ¶ 312.

[62] Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, 14 FCC Rcd 14712, 14841, ¶ 298 (1999) ("*SBC/Ameritech Merger Order*").

[63] International Data Corp., *ATM Services Market Share and Assessment: 1999-2004*, at 35 (Fig. 18) (Dec. 1999) (ATM data for 1999); International Data Corp., *U.S. Packet/Cell-Based Services Market Share and Forecast: 1999-2003*, at 41 (Fig. 20) (Feb. 1999) (frame relay data for 1999).

service, 48 provide frame relay, 54 provide IP, and 71 provide xDSL.[64] It can hardly be said that CLECs such as these are impaired without access to ILEC networks on an unbundled basis.

The only new argument raised in the petitions is meritless. Intermedia argues that, because the Commission recently concluded that some advanced services are subject to section 251(c)(4)'s resale obligations,[65] the Commission "implicitly and explicitly concluded that *all* Section 251 obligations attach to *all* advanced services."[66] The Commission, of course, reached no such sweeping conclusion in its *Second Advanced Services Order*. Instead, the Commission made the limited finding that "advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation" but that "advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering" are not.[67]

Intermedia's further logical leap – that, because section 251(c)(3), like section 251(c)(4), refers to "telecommunications services," "consistency requires that the Commission apply not only the resale obligations of Section 251 to advanced services offered by ILECs, but should also require ILECs to unbundle the elements necessary to provide advanced services" – is directly contrary to the Supreme Court's opinion in *Iowa Utilities Board*.[68] The Supreme Court made clear that, section 251(c)(3) does not, as Intermedia suggests, impose an underlying duty to make all network elements available.[69] Rather, the Commission must first conclude, at a minimum,

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[64] New Paradigm Resources Group, Inc., *CLEC Report 2000*, Ch. 8 (11th ed. 2000).

[65] Second Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19237 (1999) ("*Second Advanced Services Order*").

[66] Intermedia Petition at 10.

[67] *Second Advanced Services Order*, 14 FCC Rcd at 19238, ¶ 3.

[68] Intermedia Petition at 11-12.

[69] *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 736.

that the "necessary" and "impair" standard of section 251(d)(2) is satisfied. This test does not apply to resale obligations under section 251(c)(4); thus, the *Second Advanced Services Order* is inapposite.

C. The Limited Situation in Which the Commission Allows Unbundling of Packet Switching Should Not Be Modified or Expanded

The Commission established a limited exception to its decision not to unbundle packet switching. It reasoned that, because xDSL services may not be provisioned over fiber facilities, carriers cannot provide xDSL service in areas where there are no spare copper facilities available and an incumbent deploys a digital loop carrier ("DLC"), unless the carrier has access to unbundled packet switching.[70] Accordingly, the Commission concluded that, if an incumbent has deployed a DLC system and places a DSLAM in a remote terminal and no spare copper facilities are available, requesting carriers must be permitted to install their DSLAMs at the remote terminal or, alternatively, the incumbent must provide requesting carriers access to unbundled packet switching.[71]

Sprint asks the Commission to eliminate the condition that there be "no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer," suggesting that this condition creates a loophole of some kind.[72] Here, Sprint ignores the very foundation for the Commission's exception: it is only when spare copper loops are unavailable that the need for access to packet switching arises. If spare copper loops are available, the issue of not being able to provision xDSL service over fiber does not arise because there is no interruption of copper that requires collocation at the remote terminal or access to packet switching. Essentially,

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[70] *UNE Remand Order* ¶ 313.

[71] *Id.*

[72] Sprint Petition at 13 (quoting 47 C.F.R. § 51.319(c)(5)(ii)).

then, Sprint asks the Commission to allow access to unbundled packet switching even when carriers are not impaired without it. Such a rule would plainly violate section 251(d)(2).

The Commission should also deny MCI's request for "clarification" that "an ILEC must unbundle packet switching in any location where it places advanced services equipment when a requesting carrier cannot collocate advanced services equipment in that location."[73] A CLEC is not necessarily impaired if it cannot collocate its equipment in the same location where the incumbent collocates its equipment. For example, if space in the central office is full, a CLEC can collocate in an adjacent facility and use a copper wire cross-connect to connect its packet switch with the loop. The rationale for the Commission's limited exception to its decision not to unbundle packet switching – the problems CLECs face when trying to provide xDSL service when incumbents deploy digital loop carriers – would not be present in that situation. Moreover, as framed, MCI's request would require ILECs to provide unbundled access not only to DSLAMs, but to any and all advanced services equipment if a CLEC cannot collocate any type of advanced services equipment (*e.g.*, a DSLAM) at a particular location. This request would thus dramatically expand the incumbent's unbundling obligation in ways the Commission expressly rejected and without a showing of impairment.

D. AT&T's Attempts To Bypass the Requirements Announced in the *Line Sharing Order* Should Be Rejected

AT&T asks the Commission to order unbundling of "xDSL-equipped loops" in conjunction with the UNE-P.[74] AT&T claims that "without xDSL-equipped loops, it is

[73] MCI Clarification Petition at 13.

[74] AT&T Petition at 2.

"'effectively precluded altogether' from making . . . a bundled voice/data service widely available when UNE-P is employed to provide the voice portion of the bundle."[75]

By suggesting that it is unable to offer configurations of voice and data service "when UNE-P is employed," AT&T has framed its request in a misleading fashion. Contrary to what AT&T implies, AT&T and other CLECs are today perfectly able to use unbundled loops, unbundled local switching, and shared transport to provide voice services that are packaged with a data offering on the same loop. They can do so by purchasing each of these elements and ordering two cross-connects: a cross-connect from the unbundled loop to their (or a partnering data CLEC's) collocated splitter and another cross-connect from the splitter to SBC's switch port so that the voice traffic can be routed back to SBC's switch. But this is not a UNE-P service. By definition, the UNE-P is a platform of network elements that are already combined. In contrast, when a carrier seeks to disconnect a loop from the switch and reconnect it to a splitter, it no longer seeks the UNE-P, but rather a new service architecture, which contains new equipment not currently installed in the network. In this respect, AT&T's contention that it cannot use the UNE-P in conjunction with its own xDSL service is, literally, true, but misses the point: AT&T could refigure elements originally ordered as a UNE-P to provide voice and data service over the same line, but since this capability does not exist as part of the ILEC's network configuration, implementing this capability would cause the elements to cease to be a UNE-P.

What AT&T seeks – without expressly asking for it – is the establishment of a new network element: the splitter. AT&T wants the Commission to require ILECs to install splitters, so that AT&T can use those splitters to route AT&T's voice traffic to the ILEC switches and the data traffic to a CLEC DSLAM. But the ILECs have no such obligation to reconfigure their

[75] *Id.* at 5-6.

networks specifically for purposes of unbundling, and AT&T does not even purport to show how this new network element meets the "impair" test. Indeed, AT&T's request is directly contrary to the Commission's finding that "equipment needed to provide advanced services, such as DSLAMs and packet switches, are available on the open market at comparable prices to incumbents and requesting carriers alike."[76]

Indeed, in suggesting that ILECs should be required to split traffic so that AT&T can provide a voice service in conjunction with a different CLEC's data service, AT&T is really attacking the clear holding of the *Line Sharing Order*[77] that ILECs must provide line sharing only when they provide voice service to the customer:

> [L]ine sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on higher frequencies. The record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain access to the high frequency portion. . . . [I]ncumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.[78]

This is not the proper forum in which to challenge the *Line Sharing Order*,[79] and even if it were, AT&T's challenge is meritless. The rule established by the *Line Sharing Order* correctly reflects that CLECs are not impaired without access to line sharing when the incumbent does not provide

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[76] *UNE Remand Order* ¶ 308.

[77] Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of* 1996, CC Docket Nos. 98-147 & 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

[78] *Id.* ¶ 72 (internal citations omitted).

[79] Because the Commission has made it quite clear when and under what circumstances a CLEC is entitled to line sharing, the issue is not properly raised in a petition for clarification. *See generally id.*; *see* MCI Clarification Petition at 10-11.

voice service. The Commission mandated line sharing when the incumbent provides voice service because "only the voice service provider that already controls the entire loop can provide xDSL-based service to that customer."[80] The concern was that CLECs would have to purchase entire unbundled loops to provide their data services to ILEC voice customers, whereas the voice provider could provide data over the same voice line.[81] "[I]t is the fact that the incumbent is already providing voice service on a loop that makes the preservation of competitive access to the high frequency portion of that loop so vital."[82] When a CLEC is the voice provider, however, it controls the loop, and it (or another partnering CLEC) can bypass the incumbent and provide xDSL service to that CLEC voice customer without the need for a second loop. Thus, a CLEC is not impaired without a line sharing requirement when the incumbent is not the voice provider.[83]

AT&T's claim that the incumbent should provide line-shared loops just for CLECs also violates the Eighth Circuit's decision that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[84] As the Commission concluded in the *Local Competition Order*, CLECs must pay incumbents when they ask incumbents to take "affirmative steps" to change their existing network.[85] The incumbent LEC need not "cater to every desire of every requesting carrier."[86]

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[80] *Line Sharing Order* ¶ 38.

[81] *Id.* ¶¶ 38, 40.

[82] *Id.* ¶ 56.

[83] *Id.* ¶ 72 & n.160 ("[W]e do not find impairment where the incumbent LEC is not providing voice service on the customer's loop"); *see also id.* ¶ 57.

[84] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (emphasis added), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

[85] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, 11 FCC Rcd 15499, 15692, ¶ 382 ("*Local Competition Order*"), *modified on recon.*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); *see also id.* at 15848, ¶ 683.

[86] *Id.* MCI makes a similar argument but suggests that incumbents will leverage or tie their power over advanced services to impede the provision of voice services. MCI Clarification Petition at 3-6. But incumbents certainly have

MCI asks the Commission to clarify that, "where an incumbent sets up a separate subsidiary to provide high-speed services to end-user customers, a CLEC and that separate subsidiary must have exactly the same access to the functionalities of the loop . . . and the ILEC must perform all the related cross-connections and other activities for the CLEC that it performs for itself."[87] This issue is not properly raised in this proceeding, which addresses the obligations of ILECs under sections 251(c)(3) and 251(d)(2). The 1996 Act does not require ILECs to establish a separate subsidiary to provide advanced services. To the extent ILECs have established such subsidiaries, they have done so voluntarily in the context of other proceedings. The scope of those commitments are not properly addressed here.

III. THE COMMISSION SHOULD NOT RECONSIDER ITS DECISION TO ALLOW ILECS TO RECOVER THEIR COSTS FOR LOOP CONDITIONING

The Commission correctly concluded in the *Local Competition Order* that the requesting carrier should bear, under the cost recovery provisions of section 251(d)(1) of the Act, "the cost of compensating the incumbent LEC for [loop] conditioning."[88] No party challenged that conclusion on appeal. And it was reiterated in the *UNE Remand Order*, where the Commission again found that incumbents "should be able to charge for conditioning . . . loops."[89]

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no market power in advanced services. *See* SBC UNE Remand Comments at 65-76. To the contrary, the Commission recognized "[c]ompetitive LECs and cable companies appear to be leading the incumbent LECs in the deployment of advanced services." *UNE Remand Order* ¶ 307. In any event, SBC is willing to provide xDSL service to a customer who obtains voice service from a CLEC; what SBC will not do is engage in line sharing with the CLEC when the CLEC provides the voice service.

[87] MCI Clarification Petition at 11.

[88] *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382 & n.830.

[89] *UNE Remand Order* ¶ 193 (citing *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382).